

UNITED STATE DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LEEWARD CONSTRUCTION COMPANY, LTD.

Petitioner,

-against-

AMERICAN UNIVERSITY OF ANTIGUA --  
COLLEGE OF MEDICINE AND MANIPAL  
EDUCATION AMERICAS, LLC f/k/a GCLR, LLC,

Respondents.  
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Case No. 1:12-CV-06280-  
LAK/GWG  
(ECF CASE)

Honorable Lewis A. Kaplan  
United States District Judge

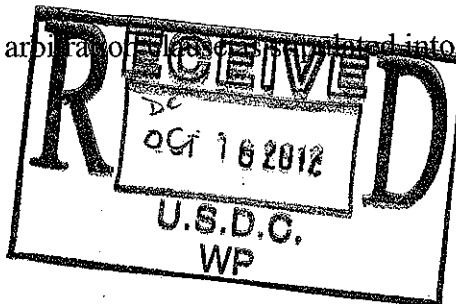
**AMENDED**  
**PETITION**

Leeward Construction Company, Ltd., by its attorney Lewis & Greer, P.C. hereby petitions and moves this court pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §201 *et seq.*, for an order confirming a Final Arbitration Award, certified June 22, 2012 and modified August 8, 2012, and for entry of a money judgment against the Respondents for the amounts stated in the Award:

**INTRODUCTION**

1. This proceeding arises out of a contract between the Petitioner and Respondent, American University of Antigua -- College of Medicine for the construction of a medical school in St. Johns, Antigua.

2. The General Conditions to the Contract contain an arbitration clause that requires the parties to arbitrate any claim arising out of or related to the Contract in accordance with the Construction Industry Rules of the American Arbitration Association. (An original copy of the Contract containing the arbitration clause was submitted into evidence at the arbitration



hearing is submitted herewith as Exhibit A. The arbitration agreement is set forth in Section 4.6 of the General Conditions to the Contract, which is at page AUA 000036.)

3. On February 3, 2011, the Petitioner initiated an arbitration against the AUA with respect to claims arising out of or related to the Contract and on June 22, 2012, a panel of three arbitrators certified a Final Arbitration Award, in favor of the Petitioner, exclusive of interest at the rate of seven percent (7%) per annum as provided in the Award, in the amount of EC \$2,619,130.19, which converts to US \$970,130.19.<sup>1</sup> The Final Award was modified on August 8, 2012, to correct some minor clerical errors in the Award. (A copy of the Final Award certified June 22, 2012 is submitted herewith as Exhibit B; a copy of the Resolution dated August 9, 2012, modifying the Final Award is annexed hereto, as Exhibit C; a copy of the Final Award as modified on August 8, 2012 is annexed hereto as Exhibit D.)

### **PARTIES**

4. Petitioner, Leeward Construction Company, Ltd. ("Leeward" or "Petitioner") is a corporation duly organized and existing under the laws of the Commonwealth of Antigua and Barbuda, with office and principal place of business at All Saints Road, St. Johns, Antigua.

5. Respondent American University of Antigua -- College of Medicine ("AUA") is owned and operated by the Respondent Manipal Education Americas, LLC f/k/a GCLR, LLC ("MEA"), a limited liability company organized and existing under the laws of the State of New

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<sup>1</sup> The Arbitration Tribunal awarded damages in Eastern Caribbean Dollars ("EC"). As of June 22, 2012 and August 8, 2012, the conversion rate for Eastern Caribbean dollars to United States dollars is 0.3704 United States dollars for each Eastern Caribbean dollar, and United States dollar to Eastern Caribbean dollar is 2.700 Eastern Caribbean dollars for each United States dollar. See <http://www.likeforex.com>. For purposes of this Petition/Motion, the Petitioner will reference the award going forward in both United States Dollars and Eastern Caribbean Dollars.

York, with an office and principal place of business at 1 Battery Park Plaza, 33rd Floor, New York, New York, U.S.A. (collectively, hereinafter "Respondents").

### **JURISDICTIONAL STATEMENT**

6. This Court has jurisdiction over this proceeding pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 9 U.S.C. §203 (the "Convention").

7. This Court also has jurisdiction over the proceeding pursuant to 28 U.S.C. §1332(a)(2) in that the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest, and costs, and is between citizens of a State and citizens or subjects of a foreign state.

### **VENUE**

8. Pursuant to 9 U.S.C. §204 and 28 U.S.C. §1391(b)(1) venue is proper in the United States District Court for the Southern District of New York because the MEA is a resident of the District.

### **FACTS**

9. On September 25, 2008, Leeward, as contractor, and the AUA, as owner, executed a contract for the construction of a medical school in St. Johns, Antigua.

10. The General Conditions to the Contract contain an arbitration clause that reads as follows:

#### **§ 4.6 ARBITRATION**

§ 4.6.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration.

§ 4.6.2 Claims shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect. Location of any Arbitration will be Antigua.

11. On February 3, 2011, Leeward commenced an arbitration proceeding against the AUA with the American Arbitration Association International Center for Dispute Resolution (“AAA”) to arbitrate claims arising out of or related to the Contract.

12. Although the Arbitration Agreement provides for the location of the arbitration to take place in Antigua, the parties stipulated and agreed to conduct the arbitration in Puerto Rico.

13. Pursuant to the Construction Industry Rules of the American Arbitration Association, the AAA appointed a panel of three arbitrators to hear and determine the claims.

14. The arbitration hearing at the Courtyard Marriott in Isla Verde, Puerto Rico took place from March 5, 2012 through March 9, 2012 and the arbitrators declared the hearing closed and the case submitted for resolution on May 22, 2012.

15. By Final Award certified June 22, 2012 and modified on August 8, 2012, the Arbitrators directed the AUA to pay damages to Leeward with interest at the rate of seven percent (7%) per annum as follows (Exhibit B, pp. 31-32):

Award	Amount in US\$/ EC\$	Comments	Date Interest Runs From	Interest Per Diem Amount in US\$/ EC\$	Total Accrued Interest Through August 14, 2012 in US\$/ EC\$	Total with Interest in US\$/ EC\$
a.) Interest on the Payments Due and Unpaid	US\$16,526.27/ EC\$44,617.37	This sum shall accrue interest of 7% per annum from the date of issuance of termination of the Project, October 31, 2009.	October 31, 2009	US\$3.17/ EC\$8.56	US\$3,266.47/ EC\$8,710.78	US\$19,752.75/ EC\$53,328.15

b.) Damages	US\$86,181.02/ EC\$232,670.13	This sum shall accrue interest of 7% per annum from the date of issuance of this Final Award.	June 22, 2012	US\$16.53/ EC\$44.62	US\$875.89/ EC\$2,364.95	US\$87,056.99/ EC\$235,035.08
c.) Overhead and Profit for work deleted, omitted or modified.	US\$297,208.68/ EC\$802,399.25	This sum shall accrue interest of 7% per annum from the date of issuance of termination of the Project, October 31, 2009.	October 31, 2009	US\$57.00/ EC\$153.88	US\$58,024.91/ EC\$156,654.71	US\$355,233.59/ EC\$959,053.96
d.) Additional Preliminaries	US\$176,968.62/ EC\$477,777.04	This sum shall accrue interest of 7% per annum from the date of issuance of termination of the Project, October 31, 2009.	October 31, 2009	US\$33.94/ EC\$91.63	US\$34,550.09/ EC\$93,277.79	US\$211,518.71/ EC\$571,054.83
e.) Change Order Work	US\$70,453.85/ EC\$190,210.19	This sum shall accrue interest of 7% per annum from the date of issuance of termination of the Project, October 31, 2009.	October 31, 2009	US\$13.51/ EC\$36.48	US\$13,754.91/ EC\$37,135.28	US\$84,208.76/ EC\$227,345.47
f.) Retainage	US\$218,566.74/ EC\$590,083.00	This sum shall not accrue any interest. Leeward shall submit to AUA all contractually required documentation as set forth in Section 9.10.2 of the General Conditions. Leeward will have a term of not more than 30 calendar days from the date of issuance of this Final Award to submit said documentation. Once Leeward has submitted all required documentation accordingly, AUA shall release the retainage in a term not to exceed 30 calendar days, upon after which such amount shall start accruing interest at the rate of 7% per annum. If Leeward fails to comply with Section 9.10.2, of the General conditions in the time hereby stated and granted the claim for such amount will be considered relinquished. Considering that this case is sub-judice; the herein referred notice may be made by counsel for Leeward to counsel for AUA , or by Leeward to AUA.	August 12, 2012	US\$41.92/ EC\$113.17	US\$83.83/ EC\$226.33	US\$218,650.58/ EC\$590,309.33

	<b>Total Award</b> US\$865,905.19 EC\$2,337,756.98				<b>Total Accrued Interest:</b> US\$110,516.19 EC\$298,369.84	<b>Total with Interest:</b> US\$976,421.37 EC\$2,636,126.82
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16. Leeward has complied with the terms and conditions of the Final Award, including the requirements for the payment of contract retainage as set forth in paragraph 1(f) of the Award (Exhibit B, pp. 31-32). (An affidavit of compliance is submitted herewith as Exhibit C.)

17. Upon information and belief, MEA, AUA's owner, is an agent and/or alter-ego of the AUA as a result of:

- (a) a disregard of the corporate formalities between the AUA and MEA;
- (b) inadequately capitalization of the AUA and/or the AUA and MEA have intermingled their funds (A copy of a check from GCLR, LLC to Lewis & Greer, P.C. is submitted herewith as Exhibit E; Copies of wire transfer receipts from a New York bank account to Leeward are submitted herewith as Exhibit F.)
- (c) an overlap in personnel between the AUA and MEA; and
- (d) a common office space, address and/or telephone number for the AUA and MEA, in that MEA's New York offices are used to run the AUA's operation (Screenshots of the AUA's website are submitted herewith as Exhibit G.).

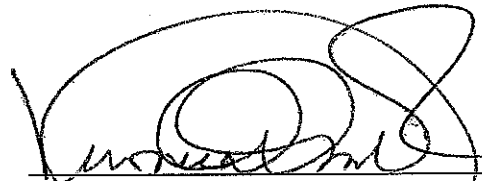
As a result of the foregoing, as an agent and/or alter-ego of the AUA, MEA is bound by the Final Award.

18. Pursuant to the Final Award, Leeward is entitled to Judgment against the Respondents in amount of US \$976,421.37/EC \$2,636,126.82, which includes interest as provided in the Award through August 14, 2012, no part of which has been paid, although duly demanded.

**WHEREFORE**, for reasons set forth herein, Petitioner Leeward Construction Company, Ltd. petitions and moves this Court to confirm the Final Arbitration Award and enter a judgment against the Respondent as follows:

- a. Interest on payments due and unpaid in the amount of US \$16,526.27/EC\$ 44,617.37 plus interest at the rate of 7% per annum from October 31, 2009.
- b. Damages in the amount of US \$86,181.02/EC \$232,670.13 plus interest at the rate of 7% per annum from June 22, 2012.
- c. Overhead and profit for work deleted, omitted or modified in the amount of US \$297,208.68/EC \$802,399.25 plus interest at the rate of 7% per annum from October 31, 2009.
- d. Additional preliminaries in the amount US \$176,968.62/EC \$477,777.04 plus interest at the rate of 7% per annum from October 31, 2009.
- e. Change order work in the amount of US \$70,453.85/EC \$190,210.19, plus interest at the rate of 7% per annum from October 31, 2009.
- f. Retainage in the amount of US \$ 218,566.74/EC\$ 590,083.00 plus interest at the rate of 7% per annum from August 12, 2012.
- g. Such other and further relief as the Court may deem just and proper.

Dated: October 16, 2012  
Poughkeepsie, New York



Veronica A. McMillan, Esq. (VM1107)

**LEWIS & GREER, P.C.**

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